

The House Committee on Energy, Utilities and Telecommunications offers the following substitute to HB 376:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 4 of Chapter 5 of Title 46 of the Official Code of Georgia Annotated,
2 relating to telecommunications and competition development, so as to modernize
3 telecommunications competition by eliminating artificial and outdated subsidy mechanisms
4 in the form of contributions to the Universal Access Fund; to amend certain definitions; to
5 eliminate provisions related to the Universal Access Fund; to revise certain provisions
6 relating to rates for basic local exchange services; to require the transition to intrastate and
7 interstate switched access parity over a certain period of time; to provide for termination of
8 the Universal Access Fund; to provide for jurisdiction and authority of the commission; to
9 provide for certain changes relating to basic local exchange services; to provide for the
10 construction of a certain Code section; to provide for related matters; to provide effective
11 dates; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **PART I**
14 **SECTION 1-1.**

15 Article 4 of Chapter 5 of Title 46 of the Official Code of Georgia Annotated, relating to
16 telecommunications and competition development, is amended by revising subsection (b) of
17 Code Section 46-5-161, relating to legislative findings and intent relative to "The
18 Telecommunications and Competition Development Act of 1995," as follows:

19 "(b) It is the intent of this article to:

- 20 (1) Permit local exchange companies to elect alternative forms of regulation;
21 (2) Protect the consumer during the transition to a competitive telecommunications
22 market;
23 (3) Assure reasonable cost for universal access to basic telecommunications services
24 throughout Georgia;
25 (4) Encourage investment in Georgia's telecommunications infrastructure and encourage
26 the introduction of innovative products and services for Georgia's consumers;

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- (5) Authorize competition for local exchange services; and
- (6) Allow pricing flexibility for all telecommunications services other than basic local exchange services for certain telecommunications companies."

SECTION 1-2.

Said article is further amended by revising subsections (f) and (g) of Code Section 46-5-166, relating to rates for basic local exchange services, as follows:

"(f)(1) Except as otherwise provided in this subsection, the rates for switched access by each Tier 1 local exchange company shall be no higher than the rates charged for interstate access by the same local exchange company. The rates for switched access shall be negotiated in good faith between the parties. In the event that the rates for switched access cannot be negotiated between the parties, any party may petition the commission to set reasonable rates, terms, or conditions for switched access. The commission shall render a final decision in any proceeding initiated pursuant to the provisions of this paragraph no later than 60 days after the close of the record except that the commission, by order, may extend such period in any case in which it shall find that the complexity of the issues and the length of the record require an extension of such period, in which event the commission shall render a decision at the earliest date practicable. In no event shall the commission delay the rendering of a final decision in such proceeding beyond the earlier of 120 days after the close of the record or 180 days from the filing of the notice of petition for determination of rates for switched access that initiated the proceeding.

(2)(A) Each Tier 2 local exchange company shall transition, in the manner described in this subsection, prior to July 1, 2000, adjust in equal annual increments its intrastate switched access ~~charges~~ rates to parity with its similar interstate switched access rates that are in effect as of July 1, 2009. The transition to intrastate and interstate switched access parity shall occur over a period of no greater than ten years in equal annual increments; provided, however, that nothing in this subparagraph shall prevent any Tier 2 local exchange company from making an immediate transition to parity.

(B) Each telecommunications company holding a certificate of authority, or otherwise authorized by the commission to provide telecommunications services in this state, other than a Tier 2 local exchange company, shall transition over a period of no greater than ten years in equal annual increments beginning on either July 1, 2009, or the date on which the telecommunications company first offers service, whichever is later, its intrastate switched access rates to levels not to exceed the similar interstate switched access rates in effect as of July 1, 2009, that the incumbent Tier 1 or Tier 2 company in the corresponding service territory charges for equivalent functions; provided,

however, that nothing in this subparagraph shall prevent such transition from being made immediately.

(C) The commission shall have the authority to govern the transition to intrastate and interstate switched access parity provided for in subparagraphs (A) and (B) of this paragraph and may order, upon good cause shown, further reductions in intrastate switched access rates.

~~The commission shall have authority to govern the transition of Tier 2 local exchange company switched access rates to their corresponding interstate levels and shall allow adjustment of other rates, including those of basic local exchange services or universal service funds, as may be necessary to recover those revenues lost through the concurrent reduction of the intrastate switched access rates. In no event shall such adjustments exceed the revenues associated with intrastate to interstate access parity as of July 1, 1995. In addition, if access revenues have dropped below July 1, 1995, levels in subsequent years, the adjustment in those years will be based on the reduced balance. Any intrastate to interstate switched access adjustments resulting in increased local rates that have been capped under subsection (b) of this Code section will be allowed and a new cap will be established pursuant to this Code section. In the event that the rates for switched access cannot be negotiated in good faith between the parties, the commission shall determine the reasonable rates for switched access in accordance with the procedures provided in paragraph (1) of this subsection.~~

(g) In accordance with rules to be promulgated by the commission, any electing company shall file tariffs with the commission for basic local exchange services and other local exchange services that state the terms and conditions of such services and the rates ~~as established pursuant to this Code section~~ unless such company has eliminated such tariffs pursuant to paragraph (2) of subsection (b) of Code Section 46-2-23."

SECTION 1-3.

Said article is further amended by adding new Code sections to read as follows:

"46-5-168.1.

(a) Consistent with the ten-year transition described in paragraph (2) of subsection (f) of Code Section 46-5-166, the commission shall allow the adjustment of rates for basic local exchange services, which rates shall include mandatory expanded area service fees, to 125 percent of the July 1, 2009, residential state-wide weighted average rate for basic local exchange services imputed across all access lines and adjusted annually for inflation measured by the change in GDP-PI.

(b) Notwithstanding any other provision in this article, once any electing local exchange company has achieved intrastate and interstate switched access parity and irrevocably

certifies such to the commission, subsections (a), (b), (c), and (d) of Code Section 46-5-166 shall no longer apply and subsection (e) of Code Section 46-5-166 shall apply to all rates; provided, however, that the electing local exchange company's intrastate switched access rates shall remain at or below its intrastate access rates as of the date of such certification.

46-5-168.2.

Code Section 46-5-166 shall not be construed to:

- (1) Affect any authority of the commission to act in accordance with federal laws or regulations of the Federal Communications Commission, including, without limitation, jurisdiction granted to set rates, terms, and conditions for access to unbundled network elements and to arbitrate and enforce interconnections agreements; or
- (2) Restrict or expand the authority or jurisdiction of the commission with regard to the resolution of complaints between local exchange companies and certificated local exchange companies."

PART II

SECTION 2-1.

Article 4 of Chapter 5 of Title 46 of the Official Code of Georgia Annotated, relating to telecommunications and competition development, is amended by revising Code Section 46-5-162, relating to definitions relative to "The Telecommunications and Competition Development Act of 1995," as follows:

"46-5-162.

As used in this article, the term:

- (1) 'Alternative regulation' means a form of regulation pursuant to which the rates, terms, and conditions for telecommunications services provided by a local exchange company are set pursuant to the rules specified in this article.
- (2) 'Basic local exchange services' or 'universal access local exchange services' ~~mean~~ means the provision to residential and single line business customers in Georgia of services composed of a touch tone switched access line and dial tone; of a quality sufficient for ~~two-way~~ two-way voice and 9600 baud data/fax communications. This service shall include 1+ dialing for access to competitive providers of telecommunications services by January 1, 1997. The elements of universal access local exchange services are subject to subsequent review and modification by the commission.
- (3) 'Caller identification service' means a type of telephone service which permits telephone customers to see the telephone number of incoming telephone calls.
- (4) 'Commission' means the Georgia Public Service Commission.

(5) 'Electing company' means a local exchange company subject to the alternative regulation described in this article.

~~(6) 'Fund' means the Universal Access Fund created in Code Section 46-5-167.~~

~~(7)~~ 'Gross domestic product-price index' or 'GDP-PI' means the gross domestic product fixed weight price index calculated by the United States Department of Commerce.

~~(8)~~(7) 'Interconnection service' means the service of providing access to a local exchange company's facilities for the purpose of enabling another telecommunications company to originate or terminate telecommunications service.

~~(9)~~(8) 'Local calling area' means the geographic area encompassing one or more local ~~exchanges~~ exchange services as described in commission orders or in maps, tariffs, and rate schedules reviewed and approved by the commission.

~~(10)~~(9) 'Local exchange company' means a telecommunications company authorized to provide local exchange service as described in this article. For purposes of this article, there shall be two categories of local exchange companies:

(A) Tier 1 companies are those companies with 2 million or more access lines within Georgia holding a certificate of public convenience and necessity issued by the commission; and

(B) Tier 2 companies are those companies with less than 2 million access lines within Georgia holding a certificate of public convenience and necessity issued by the commission.

~~(11)~~(10) 'Local exchange services' means services offered for the transmission and utilization of two-way interactive communications and associated usage with the local calling area.

~~(12)~~(11) 'Local interconnection services' means that part of switched interconnection service provided for the purpose of originating or terminating a call which originates and terminates within the local calling area.

~~(13)~~(12) 'Portability' means the technical capability that permits a customer to retain the same local number at the same customer location regardless of the provider of the local exchange service.

~~(14)~~(13) 'Switched access' means that part of switched interconnection service provided for the purpose of originating or terminating a toll service.

~~(15)~~(14) 'Switched interconnection service' means that part of interconnection service which utilizes the local exchange company's switching facilities to provide line or trunkside access or both to the local exchange company's end office or tandem switches for the purpose of originating and terminating the telecommunications services of other telecommunications companies.

(15) 'Tariff' means the schedule or other writing filed with the commission that describes the rates, terms, and conditions of certain telecommunications services provided by the telecommunications company.

(16) 'Telecommunications company' means any person, firm, partnership, corporation, association, or municipal, county, or local governmental entity offering telecommunications services to the public for hire.

(17) 'Telecommunications services' means the services for the transmission of two-way interactive communications to the public for hire. For purposes of illustration, the term 'telecommunications services' includes without limitation local exchange services and interconnection services.

(18) 'Toll service' means the transmission of two-way interactive switched communications between local calling areas.

(19) 'Universal access provider' means a local exchange company that is obligated to provide basic local exchange service in all of its local calling areas in response to reasonable requests for such service and which, in consideration of such obligation, may have its rates for local ~~switched~~ interconnection service established as provided in this article."

SECTION 2-2.

Said article is further amended by revising subsection (e) of Code Section 46-5-164, relating to interconnection among certificated local exchange companies, as follows:

"(e) The commission is authorized to allow local exchange companies to resell the services purchased from other local exchange companies pursuant to rules determining when and under what circumstances such resale shall be allowed; ~~provided, however, that the resale of basic local exchange services supported by the Universal Access Fund shall be limited to users and uses conforming to the definition of basic local exchange services set forth in paragraph (2) of Code Section 46-5-162.~~ Any local exchange company or telecommunications company desiring to purchase or to resell services purchased from another local exchange company may petition the commission for the authorization to purchase or to resell such services. In cases where the purchase or resale of services purchased is authorized by the commission, the commission shall determine the reasonable rates, terms, or conditions for the purchase or resale of such local exchange services such that no local exchange company or telecommunications company gains an unfair market position. The commission shall render a final decision in any proceeding initiated pursuant to the provisions of this subsection no later than 60 days after the close of the record except that the commission, by order, may extend such period in any case in which it shall find that the complexity of the issues and the length of the record require an extension of such

period, in which event the commission shall render a decision at the earliest date practicable. In no event shall the commission delay the rendering of a final decision in such proceeding beyond the earlier of 120 days after the close of the record or 180 days from the filing of the notice of petition under this subsection. The commission, at its discretion or upon a petition filed by either party, may modify a ruling rendered under this subsection, provided that a petition for modification ~~may~~ shall not be filed more than once in any 18 month period."

SECTION 2-3.

Said article is further amended by revising Code Section 46-5-167, relating to the Universal Access Fund, as follows:

"46-5-167.

~~(a) The commission shall create a Universal Access Fund to assure the provision of reasonably priced access to basic local exchange services throughout Georgia. The fund shall be administered by the commission under rules to be promulgated by the commission as needed to assure that the fund operates in a competitively neutral manner between competing telecommunications providers.~~

~~(b) The commission shall require all telecommunications companies providing telecommunications services within Georgia to contribute quarterly to the fund in a proportionate amount to their gross revenues from sale to end users of such telecommunications services as determined by rules to be promulgated by the commission.~~

~~(c) The commission may also require any telecommunications company to contribute to the fund if, after notice and opportunity for hearing, the commission determines that the company is providing private local exchange services or radio based local exchange services in this state that compete with a telecommunications service provided in this state for which a contribution to the fund is required under this Code section.~~

~~(d) Contributions to the fund shall be determined by the commission based upon estimates as to the difference in the reasonable actual costs of basic local exchange services throughout Georgia and the amounts established by law or regulations of the commission as to the maximum amounts that may be charged for such services.~~

~~(e) Moneys in the fund shall be distributed quarterly to all providers of basic local exchange services upon application and demonstration that the reasonable costs as determined by the commission to provide basic local exchange services exceed the maximum fixed price permitted for such basic local exchange services. The commission may take into account the possibility that a competing local exchange company is providing or could provide lower cost basic local exchange services. Competitive providers shall be entitled to obtain a similar subsidy from the fund to the extent that they provide~~

~~basic local exchange services; provided, however, that such subsidy shall not exceed 90 percent of the per line amount provided the incumbent local exchange company for existing basic local exchange service or 100 percent of new basic local exchange service.~~

~~(f) The commission shall require any local exchange company seeking reimbursement from the fund to file the information reasonably necessary to determine the actual and reasonable costs of providing basic local exchange services.~~

~~(g) The commission shall have the authority to make adjustments to the contribution or distribution levels based on yearly reconciliations and to order further contributions or distributions as needed between companies to equalize reasonably the burdens of providing basic local exchange service throughout Georgia.~~

~~(h) A local exchange company or other company shall not establish a surcharge on customers' bills to collect from customers' contributions required under this Code section.~~

Reserved."

SECTION 2-4.

Said article is further amended by revising Code Section 46-5-168, relating to jurisdiction and authority of commission, as follows:

"46-5-168.

(a) The jurisdiction of the commission under this article shall be construed to include the authority necessary to implement and administer the express provisions of this article through rule-making proceedings and orders in specific cases.

(b) The commission's jurisdiction shall include the authority to:

(1) Adopt reasonable rules governing certification of local exchange companies;

(2) Grant, modify, impose conditions upon, or revoke a certificate;

~~(3) Establish and administer the Universal Access Fund including modifications to the maximum allowable charge for basic local exchange service;~~

~~(4)~~ Adopt reasonable rules governing service quality;

~~(5)~~(4) Resolve complaints against a local exchange company regarding that company's service;

~~(6)~~(5) Require a telecommunications company electing alternative regulation under this article to comply with the rate adjustment provisions of this article;

~~(7)~~(6) Approve and if necessary revise, suspend, or deny tariffs in accordance with the provisions of this article;

~~(8)~~(7) If necessary, elect another comparable measurement of inflation calculated by the United States Department of Commerce;

~~(9)~~(8) Establish reasonable rules and methodologies for performing cost allocations among the services provided by a telecommunications company; and

(10)(9) Direct telecommunications companies to make investments and modifications necessary to enable portability.

(c) The commission shall render a final decision in any proceeding initiated pursuant to the provisions of this article no later than 60 days after the close of the record except that the commission, by order, may extend such period in any case in which it shall find that the complexity of the issues and the length of the record require an extension of such period, in which event the commission shall render a decision at the earliest date practicable. In no event shall the commission delay the rendering of a final decision in such proceeding beyond the earlier of 120 days after the close of the record or 180 days from the filing of the notice of rulemaking, petition, or complaint that initiated the proceeding.

(d) In conducting any rule-making proceeding under this article, the commission shall consider the following factors:

(1) The extent to which cost-effective competitive alternatives are available to existing telecommunications networks and services; and

(2) Requirements necessary to prevent any disadvantage or economic harm to consumers, protect universal affordable service, ~~establish and maintain an affordable Universal Access Fund~~, protect the quality of telecommunications services, prevent anticompetitive practices, and prevent abandonment of service to areas where there is no competing provider of telecommunications service.

(e) Subject to any other provision of law protecting the confidentiality of trade secrets, the commission shall have access to the books and records of telecommunications companies as may be necessary to ensure compliance with the provisions of this article and with the commission's rules and regulations and to carry out its responsibilities under this article.

(f) In order to promote economic development and competitive advantage for the State of Georgia, the commission shall have the authority to petition, intervene, or otherwise commence proceedings before the appropriate federal agencies and courts having specific jurisdiction over the regulation of telecommunications seeking to enhance the competitive market for telecommunications services within ~~the~~ this state."

PART III

SECTION 3-1.

This Act shall become effective on July 1, 2009, except that Part II of this Act shall become effective on July 1, 2010.

SECTION 3-2.

All laws and parts of laws in conflict with this Act are repealed.